

No. 88-1668

Supreme Court, U.S.

FILED

AUG 3 1989

JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term, 1989

ATLANTIC RICHFIELD COMPANY,

Petitioner,

v.

USA PETROLEUM COMPANY,

Respondent.

**On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

JOINT APPENDIX

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**Petition For Certiorari Filed April 7, 1989
Certiorari Granted June 5, 1989**

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RELEVANT DOCKET ENTRIES

The following opinions, judgments and orders have been omitted in printing this joint appendix because they appear on the following pages in the appendix to the Petition for Certiorari:

Order of the United States District Court for the Central District of California, entered February 25, 1987 1b

Opinion and Judgment of the United States Court of Appeals for the Ninth Circuit, filed October 7, 1988 1a

Order of the United States Court of Appeals for the Ninth Circuit denying petition for rehearing and rejecting suggestion for rehearing en banc, filed January 10, 1989 1c

PLAINTIFF USA PETROLEUM COMPANY		DEFENDANT ATLANTIC RICHFIELD COMPANY
DOCKET NO. 83-3508 WPG (Bx)		
DATE	NR	PROCEEDINGS
5/27/83	1)	Filed complaint and demand for jury trial. Issued summons. Case referred to Magistrate Brown for discovery.
6/15/83	2)	Filed order (WPG)(PAR) transferring action to the calendar of Judge Gray for all further proceedings.
7/1/83	5)	Filed plaintiff's notice of motion and motion to rescind order of transfer returnable 7/25/83, 10 a.m.
7/25/83	8)	Filed stipulation and order (WPG) that this action has not been and will not be in any way consolidated with <i>In Re Petroleum Products Antitrust Litigation</i> MDL Docket No. 150 (WPG), that plaintiff's motion to rescind may and is hereby withdrawn (Entered 8/11/83). Mailed copies.
8/22/83	10)	Notice of motion to dismiss; memorandum in support. Defendant.
8/23/83	11)	Notice of taking deposition of records only of Standard Oil Co. of Ohio on 9/14/83. Plaintiff.

8/23/83	12)	Notice of taking deposition of records only of Union Oil Co. on 9/16/83. Issued Plaintiff.
8/23/83	13)	Notice of taking deposition of records only of Texaco, Inc. on 9/20/83. Plaintiff.
8/23/83	14)	Notice of taking deposition of records only of Standard Oil Co. of California. Plaintiff.
8/23/83	15)	Notice of taking deposition upon oral examination of Mobil Oil Corp. on 9/21/83 and Exxon Corp. on 9/22/83. Plaintiff.
8/23/83	16)	Notice of taking deposition of records only of Shell Oil Co. on 9/27/83. Plaintiff.
9/8/83	18)	Designation of deponent in response to Plaintiff's deposition subpoena to testify or produce documents or things. Third party Union Oil of California.
9/26/83	20)	Memorandum in opposition to Defendant's motion to dismiss (Plaintiff); returnable on 10/27/83 10 a.m.
9/27/83	21)	Notice and motion for protective order. Defendant 10/24/83 10 a.m.
9/27/83	22)	Memorandum of Points and Authorities. Defendant.
10/7/83	25)	Memorandum in opposition to motion for protective order. Plaintiff.
10/14/83	27)	Memorandum in reply to Plaintiff's memorandum in opposition to Mobil Oil's motion for protective order.

10/17/83	28)	Memorandum of Points and Authorities. Non-party Exxon Corp.
10/26/83	32)	Reply memorandum in support of Defendant's motion to dismiss.
10/24/83	33)	Minute order: Non-party motion for protective order heard and granted in part and denied in part. Mobil to make available to Plaintiff ARCO's conduct withholding.
10/28/83	34)	Memorandum in opposition to Defendant's motion to dismiss. Plaintiff supplement.
10/31/83	36)	Minute order: Defendant's motion to dismiss argued and denied.
11/17/83	37)	Opposition to motion for protective order. Plaintiff.
11/21/83	38)	Reply memorandum of points and authorities in support of motion for protective order. Exxon.
11/23/83	39)	Supplemental brief in support of opposition to Exxon's motion for protective order. Plaintiff (filed under seal).
11/28/83	41)	Minute order: Non-party Exxon's motion for protective order heard and court orders each document used for discovery to be reviewed by third party.
12/6/83	42)	Stipulation and protective order.
12/15/83	43)	Filed memorandum of decision. (Entered 12/16/83) Mailed copies and notice.
1/11/84	45)	Stipulation and protective order.
1/30/84	48)	First amended complaint and jury demand.

3/12/84	50)	Notice of motion and motion (4/9/84, 10 a.m.) to dismiss count two of amended complaint. Defendant.
3/26/84	52)	Memorandum in opposition to motion to dismiss. Plaintiff.
4/4/84	[no number]	Reply Memorandum in support of motion to dismiss. Defendant.
4/23/84	53)	Minute order: Court denies Defendant's motion to dismiss.
4/27/84	54)	Order denying Defendant's motion to dismiss count two of first amended complaint.
5/4/84	55)	Filed Defendant's answer to first amended complaint and demand for jury trial.
6/6/84	56)	Stipulation and order amending Shell protective order.
6/12/84	57)	Joint report of early meeting.
6/12/84	58)	Statement pursuant to local rule 6. Defendant.
6/13/84	59)	Statement pursuant to local rule 6. Plaintiff.
7/16/84	[no number]	Filed reporter's transcripts of proceedings.
11/1/84	62)	Joint stipulation and respective contentions of propounding and responding parties to Plaintiff's motion to compel production of documents. Plaintiff.
11/26/84	64)	Plaintiff's motion to compel production of documents granted in part and denied in part (minute order).

12/17/84	[no number]	Filed reporter's transcript of proceedings taken on 11/26/84.
3/26/85	65)	Filed Defendant's notice of motion and motion of Defendant to compel discovery 4/15/85 10 a.m.
4/5/85	67)	Plaintiff's opposition to Defendant's motion to compel discovery 4/15/85 10 a.m.
4/5/85	68)	Notice of taking deposition of ARCO on 4/24/85 2 p.m. Plaintiff.
4/5/85	69)	Notice of taking deposition of J.D. Kowal on 4/24/85. Plaintiff.
4/11/85	70)	Reply memorandum in support of defendant's motion to compel discovery 4/15/85 10 a.m.
4/12/85	71)	Notice of withdrawal of motion to compel discovery. Defendant.
11/5/85	74)	Joint status report.
11/15/85	75)	Minute order: Status conference continued to 6/23/86 for further status conference after discovery.
12/4/85	76)	Reporter's transcript of proceedings taken on 11/15/85.
4/4/86	79)	Under seal/notice of motion of Defendant ARCO for partial summary judgment; memorandum in support.
4/4/86	80)	Under seal/declaration and appendices submitted in support of Defendant ARCO's motion for partial summary judgment.

4/28/86	82)	Stipulation and order that count two of USA's amended complaint is dismissed with prejudice and without costs to either party; USA shall have by 6/16/86 to serve its opposition to ARCO's summary judgment motion addressed to count one of the amended complaint and ARCO shall have by 7/16/86 to serve its reply; the argument on the motion is continued until a date to be determined after USA files its opposition.
6/9/86	83)	Notice of motion for a pretrial order et al 6/30/86 10 a.m. Lodged Statement Order.
6/9/86	84)	Appendices submitted in support of motion for a pretrial order et al. Lodged Statement Order.
7/25/86	88)	Plaintiff's statement of genuine issues in opposition to Defendant's motion for a pretrial order.
7/25/86	89)	Plaintiff's opposition to Defendant's motion for a pretrial order.
8/25/86	90)	Notice of errata for Defendant ARCO's reply memorandum in support of motion for a pretrial order.
8/22/86	91)	Reply memorandum in support of motion for a pretrial order et al.
9/26/86	93)	Joint status report for upcoming status conference.
10/2/86	94)	Minute order: status conference and motion of Defendant for a pretrial order continued to 10/14/86 2:30 p.m.

10/14/86 95)

1/5/87 96)

12/29/86 97)

1/9/87 98)

1/15/87 99)

2/19/87 100)

2/27/87 101)

Minute order: Status conference on Defendant's motion for pretrial order defining relevant product market and determining legal sufficiency of Plaintiff's Sherman Act Section 1 claim; motion is taken under submission; Court orders court reporter to prepare a copy of today's transcript as soon as possible.

Plaintiff's memorandum re *Cargill Inc. v. Monfort of Colorado, Inc.*

Memo citing the Supreme Court's *Cargill* opinion decided after oral argument on ARCO's summary judgment motion.

Defendant's response to Plaintiff's *Shipman* letter and *Cargill* memorandum.

USA's memorandum in reply to ARCO's response to Plaintiff's *Shipman* letter and *Cargill* memorandum.

Pretrial order specifying uncontested facts and determining the legal sufficiency of Plaintiff's Sherman Act case. Court finds that there is no just reason for delay and accordingly directs the entry of a final judgment dismissing the first count of the complaint, which pertains to the alleged violation. (Entered 2/25/87). Mail copies.

[Plaintiff USA's] notice of appeal to the 9th Circuit Court of Appeals from judgment entered 2/25/87. Paid \$70 filing and docket fee.

4/2/87 102) Stipulation and order: all proceedings in this court with respect to counts three through ten of the amended complaint are stayed until after the resolution of USA's appeal of the dismissal of count one. (Entered 4/2/87). Mailed copies to all parties.

4/3/87 103) Final judgment pursuant to Federal Rule of Civil Procedure 54(b). Plaintiff takes nothing as against Defendant under Plaintiff's Sherman Act § 1 claim which is set forth in the first count of the complaint, and that the first count of the complaint be dismissed on the merits and with prejudice. This judgment shall be deemed entered nunc pro tunc as of 2/25/87. (Entered 4/9/87). Mailed copies to all parties with notice of entry stamped.

4/15/87 [no number] Forwarded to Ninth Circuit Court of Appeals reporter's transcripts of proceedings held on 10/31/83, 4/23/84 and 10/14/86.

1/13/89 [no number] Lodged from Ninth Circuit Court of Appeals - is now ordered and hereby is reversed and remanded.

1/19/89 106) Notice of hearing on filing and spreading the judgment 2/16/89 10 a.m.

2/16/89 107) Minute order: Court orders that mandate of 9th Circuit Court of Appeals reversing and remanding appeal is hereby filed and spread upon the minutes of this United States District Court. (Entered 2/16/89). Mailed copies/Mailed notice.

2/16/89 108) Stipulation and order that all proceedings in this case are stayed until after Supreme Court rules on petition for certiorari.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

USA PETROLEUM COMPANY, Plaintiff
v. No. 83-3508-WPG (Bx)
ATLANTIC RICHFIELD COMPANY, Defendant

FIRST AMENDED COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR VIOLATIONS OF FEDERAL
ANTITRUST AND STATE TRADE REGULATION LAWS
AND DEMAND FOR JURY TRIAL

Dated January 30, 1984

The above-named plaintiff, through its attorneys, files this complaint against the above-named defendant and, demanding trial by jury, complains and alleges as follows:

COUNT ONE
(CONSPIRACY TO RESTRAIN TRADE IN VIOLATION
OF SECTION 1 OF THE SHERMAN ACT)

I.

JURISDICTION AND VENUE

1. This count is filed and these proceedings are instituted by the above-named plaintiff against the above-named defendant under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, to secure damages and injunctive relief from the above-named defendant for its violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, as hereinafter alleged.

2. Defendant maintains an office, transacts business and may be found within the Central District of California. The alleged unlawful acts and violations described below were in part conceived, carried out and made effective within the Central District of California. The interstate trade and commerce described herein and affected by the violations alleged herein are carried on in material part within the Central District of California.

II.

THE PARTIES

3. Plaintiff USA Petroleum Company ("USA") is a limited partnership with its principal place of business in Santa Monica, California. USA is the successor in interest to USA Petroleum Corporation as of December 31, 1982. USA is an independent marketer of refined gasoline and other petroleum products. USA sells such products at retail under the brand name USA. USA is also engaged to a lesser extent in the business of refining crude oil into gasoline and other petroleum products. USA does business in the state of California and elsewhere in the United States.

4. Defendant Atlantic Richfield Company ("Arco") is a corporation duly organized and existing under the laws of the state of Pennsylvania. Its principal office and place of doing business is located at 515 South Flower Street, Los Angeles, California 90071. Arco is a major integrated oil company engaged in the business of producing, purchasing and exchanging crude oil; manufacturing and refining crude oil into a number of refined petroleum products, including gasoline; transporting

crude oil and refined petroleum products; and wholesaling and retailing refined petroleum products. Arco does business in the state of California and elsewhere in the United States.

III.

ADDITIONAL CO-CONSPIRATORS

5. Various other companies and individuals not made defendants herein have participated willingly or unwillingly as co-conspirators in the violations alleged herein and have performed acts and/or made statements in furtherance thereof.

IV.

TRADE AND COMMERCE AFFECTED

6. Trade and commerce in gasoline is a significant element of trade and commerce in the state of California, in the western United States and throughout the United States.

7. The term "western United States" is used herein to refer to the states of Arizona, Nevada, California, Oregon, Washington, Alaska and Hawaii. These seven states comprise "PADD-V," one of five geographic districts within the United States established in 1950 by the Petroleum Administration for Defense.

8. Gasoline is marketed at the retail level primarily through service stations. Gasoline represents approximately 90%, in terms of dollar value, of the refined petroleum products sold through service stations.

9. Gasoline traditionally has been marketed by two distinct types of vendors: the major integrated oil companies ("the majors") and independent marketers ("dependents"). The majors consist of a small number of fully integrated enterprises which are among the largest industrial corporations in the United States and the world. Arco is one of the majors. The independents consist of smaller companies that are not fully integrated and are generally dependent upon others for their supplies of crude oil and/or refined petroleum products. Plaintiff is an independent.

10. The production of crude oil and the refining and distribution of gasoline at all times material hereto have been dominated by the majors. The majors generally have not engaged in active price competition among themselves. Instead, they charge identical, or virtually identical, prices and rely heavily on advertising; well-located, newly-constructed and well-maintained stations; and the offering of various automotive and convenience services to attract customers.

11. Arco markets gasoline at the wholesale level to, among others, (a) "branded distributors" who resell it to service stations which market it under the Arco brand name and to (b) independent, "rebrand" or "unbranded" distributors such as the plaintiff, which market it under their own brand names rather than Arco's. The price at which Arco sells gasoline to these wholesale purchasers is called the "rack" price.

12. Arco also markets gasoline through Arco-controlled operations directly to branded retail outlets.

Approximately 65% of Arco-branded stations are supplied directly through Arco. The price at which Arco sells to retail outlets is called the "dealer tank wagon" price.

13. There are some 7,000 Arco-branded stations nationwide. These include (a) stations owned by Arco itself and operated by Arco employees, (b) stations owned by Arco itself and operated by a lessee-dealer, and (c) stations owned and operated by dealers who use Arco's brand name product pursuant to licensing or franchise agreements.

14. Prior to the changes in Arco's marketing practices described below, independent marketers such as the plaintiff represented the discount segment of gasoline retailing. They have traditionally engaged in low-overhead, high-volume, discount-price gasoline retailing. Since they have persistently sold gasoline at prices less than those charged by the major oil companies, the independents have been a significant procompetitive force in the marketplace.

15. The discount segment of the gasoline market is well-recognized by both the industry and the public as a separate, distinct and identifiable retail market or sub-market generally characterized by distinct low prices, cash only sales (*i.e.*, no credit cards), distinct customers (*i.e.*, price conscious consumers) and distinct vendors selling largely through self-service stations.

16. As indicated above, independent marketers, including plaintiff, are dependent upon others for their supplies of crude oil and/or refined products. They are particularly dependent on independent refiners for their supplies of gasoline. A steady and adequate supply of

crude oil and refined products is critical to the viability and competitive effectiveness of independents generally and plaintiff specifically. Plaintiff's refining capacity is not adequate to meet its refined product needs, and it therefore depends heavily on outside suppliers, particularly independent refiners.

17. Plaintiff and its USA stations compete directly with Arco and Arco-branded stations at many locations in California and the western United States. Plaintiff is also a purchaser of refined petroleum products, including gasoline, from Arco.

18. For the last few years, there has been, and still is, a steady and continuous reduction in the competitive effectiveness of independent refiners and marketers selling in California and the western United States. During this time period, more than a dozen large independents have sold out, liquidated or drastically curtailed their operations, and many independent retail stations have been closed. The barriers to entry into this market have been high, and today such barriers are effectively insurmountable; once an independent is eliminated, it is highly unlikely that it will be replaced.

19. Prior to the conduct alleged herein, Arco sold very little gasoline in the discount market under its own brand name. In or around the spring of 1982, Arco made dramatic changes in the manner in which it markets gasoline and entered the discount market in direct head-to-head competition with discounters such as plaintiff. Among other things, Arco drastically lowered its prices and in other ways sought to appeal to price-conscious consumers.

20. The conduct of Arco as alleged herein is accelerating the reduction in the number and competitive effectiveness of independent marketers and independent refiners on whom they depend, and now threatens the viability of remaining independent marketers and refiners generally and of plaintiff specifically.

21. As a result of the unlawful activities alleged herein, the amount of gasoline sold by Arco in the state of California alone has risen 60% from 80 million gallons per month as of January 1982 to 130 million gallons per month as of January 1983 largely, if not entirely, at the expense of independents such as plaintiff.

22. Since the commencement of the conduct alleged herein and as a direct result of that conduct, Arco had captured approximately 45% of the discount market in California and 39% of the discount submarket in the western United States, as of October 1983, and its share is increasing. During this same period, Arco's rank as a gasoline retailer in California jumped from fourth to first place.

23. During the period covered by this complaint, there has been a steady and continuous flow in interstate commerce of both crude oil and refined petroleum products, including the crude oil and refined petroleum products bought and sold by the parties hereto.

V.

OFFENSES ALLEGED

24. Since approximately the spring of 1982 and continuing through the date hereof, Arco, its Arco-branded

distributors, Arco-branded retailers and others have been engaged in an unlawful combination and conspiracy to restrain trade and commerce in gasoline in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

25. The aforesaid combination and conspiracy has consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which have been (a) to fix, stabilize and maintain the retail price of gasoline sold by Arco and by Arco-branded stations to the consuming public in the state of California and in the western United States, and (b) to eliminate independent marketers and the competitive force they represent in the sale of gasoline.

26. As part of and in furtherance of this continuing combination and conspiracy, Arco and its co-conspirators have engaged in numerous acts and practices not all of which are presently known to plaintiff but which include without limitation the acts and practices set forth in the following paragraphs 27 through 38.

27. Arco and its co-conspirators have organized a resale price maintenance scheme, as a direct result of which competition that would otherwise exist among Arco-branded dealers has been eliminated by agreement, and the retail price of Arco-branded gasoline has been fixed, stabilized and maintained at artificially low and uncompetitive levels. This resale price maintenance scheme has been effected, at least in part, through the use of temporary volume allowances ("TVA's"), temporary competitive allowances ("TCA's") and other price allowances extended by Arco to its branded distributors

and dealers. Such allowances have the effect of facilitating control by Arco of the resale prices charged by its branded distributors and dealers.

28. Arco and its co-conspirators have implemented severe and predatory price cuts.

29. Arco has extended to its co-conspirators and others prices on gasoline which are below cost. These prices have facilitated the maintenance of retail prices at artificially low and uncompetitive levels.

30. Arco has extended to its co-conspirators and others prices on gasoline which, even if not below cost, are uncompetitively low and would not be maintained by a normal, profit-maximizing firm. These prices have facilitated the maintenance of retail prices at artificially low and uncompetitive levels.

31. Arco and its co-conspirators have engaged in limit pricing practices in which prices are deliberately set on gasoline at a level below their competitors' cost with the purpose and effect of making it impossible for plaintiff and other independents to compete. For example, Arco and its co-conspirators have sold gasoline, ex tax, at the retail pump for less than independents, such as plaintiff, can purchase gasoline at wholesale.

32. Arco has artificially manipulated crude oil transfer prices and has deliberately underpaid federal windfall profit taxes and state taxes so as to subsidize the maintenance of artificially low gasoline prices.

33. Arco has offered to purchase, and has purchased, crude oil and/or wholesale gasoline at high, spot market prices in order to satisfy excess demand created

by its and its co-conspirators' artificially low gasoline prices rather than raising its own gasoline prices to competitive levels or allowing its co-conspirators to do so. The results of such offers and purchases are, *inter alia*, to drive up the price of crude oil and wholesale gasoline to independent refiners and marketers and to deprive them of a normal and essential source of supply.

34. Arco has limited the amount of gasoline to be sold to independent marketers or has refused to sell to them at all while supplying Arco-branded dealers with their full requirements, even though the independents, including plaintiff, are willing to pay more at wholesale than the Arco-branded dealers are selling at retail ex tax.

35. Arco and its co-conspirators have engaged in various forms of price discrimination, all of which facilitate the destruction of competition from independent marketers. These are described more particularly in Count Three below.

36. Arco has granted, and its dealers and distributors have accepted, discriminatory and unlawful rebates and unearned discounts, including TVA's and TCA's, as described more particularly in Count Seven below.

37. Arco has solicited its dealers and distributors to participate or acquiesce in the conspiracy and has used threats, intimidation and coercion to secure compliance with its terms. Arco has, among other things, solicited dealers to lower their prices in conformity with Arco's marketing scheme and has also coerced, and attempted to coerce, them to do so by threatening them with reductions in supply, revocation or reduction of discounts,

termination of their licenses, operating agreements or franchises and other adverse economic consequences.

38. Arco has deterred and dissuaded independents who have been adversely affected by the conspiracy from filing suit or otherwise taking action to disrupt or terminate the conspiracy.

39. As a direct and proximate result of the above-described combinations and conspiracy and of the acts taken in furtherance thereof:

(a) the price of gasoline has been artificially fixed, maintained and stabilized;

(b) independent refiners and marketers have suffered substantial losses of sales and profits and their ability to compete has been seriously impaired;

(c) independent refiners and marketers have gone out of business or been taken over by Arco;

(c) there is an immediate and growing probability that the independent segment of the industry will be destroyed altogether and that control of the discount market will be acquired by Arco.

VI.

INJURY TO PLAINTIFF

40. As a direct and proximate result of the violations of law alleged herein, and each of them, plaintiff has been and continues to be injured in that:

(a) it has lost sales it otherwise would have made and it will continue to sustain greater losses if defendant's illegal conduct is not enjoined;

(b) its profits on those sales which it has made have been reduced because it has been forced to

reduce its prices below what they otherwise would have been and it will continue to sustain greater losses if defendant's illegal conduct is not enjoined;

(c) its costs of doing business have been increased and will continue to be increased even more if defendant's illegal conduct is not enjoined;

(d) it has sustained a loss in the value of its business and in the goodwill thereof and it will sustain even greater losses if defendant's illegal conduct is not enjoined;

(e) it is threatened with substantial and irreparable injury, including the prospect of being forced to curtail refining operations, close retail stations or go out of business altogether, if defendant's illegal conduct is not enjoined.

41. The amount of plaintiff's monetary injuries is not presently known or calculable but is believed to be accruing at a rate in excess of \$800,000 per month. When plaintiff has ascertained the amount of its damages, it will ask leave of Court to amend its complaint to state such amount.

COUNT TWO

(ATTEMPT TO MONOPOLIZE IN VIOLATION OF SECTION 2 OF THE SHERMAN ACT)

42. This count is filed and these proceedings are instituted under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, to secure damages and injunctive relief from Arco for its violations of Section 2 of the Sherman Act.

43. Plaintiff hereby incorporates by reference paragraph 2 as though fully set forth herein.

II.

THE PARTIES AND CO-CONSPIRATORS

44. Plaintiff hereby incorporates by reference paragraphs 3 through 5 as though fully set forth herein.

III.

TRADE AND COMMERCE

45. Plaintiff hereby incorporates by reference paragraphs 6 through 23 as though fully set forth herein.

IV.

OFFENSES CHARGED

46. Since approximately the spring of 1982, Arco has been engaged in an attempt to monopolize the distribution and sale of gasoline in and to the gasoline discount market in California and the western United States, in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

47. As part of this attempt to monopolize, Arco has, with the specific intent to eliminate and exclude plaintiff and other independent marketers as competitors and to attain the power to control prices and/or exclude competition, engaged in numerous acts and practices and has induced and/or coerced others to engage in acts and practices, not all of which are presently known to plaintiff, but which include without limitation the acts and practices alleged in paragraphs 27 through 38 of this complaint, each of which is hereby incorporated by reference as though fully set forth herein. Those acts and

practices give rise to a dangerous probability that Arco will succeed in its attempt to monopolize.

48. Arco's attempt to monopolize as alleged herein has had, and continues to have, the effects alleged in paragraph 39, which is hereby incorporated by reference as though fully set forth herein.

V.

INJURY TO PLAINTIFF

49. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT THREE

(PRICE DISCRIMINATION IN VIOLATION OF THE ROBINSON-PATMAN ACT)

I.

JURISDICTION AND VENUE

50. This count is filed and these proceedings instituted for violations of Section 2(a) of the Clayton Act, commonly known as the Robinson-Patman Act, 15 U.S.C. § 13(a).

51. Plaintiff hereby incorporates by reference paragraph 2 as though fully set forth herein.

52. Arco is engaged in interstate commerce as that term is defined by 15 U.S.C. § 12 and some of the sales transactions involved in the price discriminations alleged herein extend across state boundaries and are occurring in interstate commerce.

II.

THE PARTIES AND CO-CONSPIRATORS

53. Plaintiff hereby incorporates by reference paragraphs 3 through 5 as though fully set forth herein.

III.

TRADE AND COMMERCE AFFECTED

54. Plaintiff hereby incorporates by reference paragraphs 6 through 38 as though fully set forth herein.

IV.

OFFENSES ALLEGED

55. Since approximately the spring of 1982, Arco has engaged in geographic price discrimination between different Arco-branded dealers purchasing gasoline of like grade and quality and between different Arco-branded distributors purchasing gasoline of like grade and quality. This discrimination has been effected, at least in part, through a "zone pricing" system under which, at any one point in time, Arco sells gasoline at different prices depending on the location of the retail service station through which the product is sold to the consuming public. Arco has established approximately eight hundred (800) or more pricing zones in the United States, over one hundred (100) of which are in California. These are defined so as to target independent marketers and destroy them as effective competitors. Prices vary from zone to zone. The precise number and boundaries of the zones are not disclosed to plaintiff, to other wholesale

customers or to the public. Both the number and boundaries of the zones are constantly fluctuating at Arco's discretion.

56. Accordingly, since at least the spring of 1982, Arco has been and is still selling gasoline at lower prices in certain locations, sections and areas within and outside of California than in others, thereby discriminating among and between such locations, sections and areas, and between purchasers in such locations, sections and areas.

57. Further, since approximately the spring of 1982, Arco has engaged and continues to engage in price discrimination between different wholesale customers purchasing gasoline of like grade and quality. Arco has extended prices to its branded distributors which are more favorable than those extended to independent or unbranded wholesale customers, such as plaintiff.

58. In addition, Arco has engaged in price discrimination between its wholesale customers and retail dealers. Arco has extended prices to certain branded dealers in California and in other states which have actually been lower than its rack (*i.e.*, wholesale) prices, thus discriminating between such customers and effectuating a wholesale-retail price squeeze.

59. In each of the offenses described in paragraphs 55 through 58, Arco has engaged in various forms of price discrimination and has made sales, reasonably contemporaneous, of gasoline of like grade and quality at different prices to different customers located in different states for use, consumption or resale within the United States.

60. The purpose and effect of the foregoing discriminations, individually and collectively, are to lessen and substantially injure and destroy competition by and between Arco, its branded distributors and its branded stations, on the one hand, and independent distributors and retailers, on the other.

61. Plaintiff hereby incorporates by reference paragraph 39 as though fully set forth herein.

V.

INJURY TO PLAINTIFF

62. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT FOUR

(CONSPIRACY TO RESTRAIN TRADE IN VIOLATION OF CAL. BUS. & PROF. CODE § 16700 ET SEQ.)

63. This count is filed as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Sections 16700 *et seq.* of the California Business & Professions Code (the "Cartwright Act"). The claim asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and arises from the same transactions, circumstances and operative facts as those claims.

64. Plaintiff hereby incorporates by reference paragraphs 2 through 41 as though fully set forth herein.

COUNT FIVE

(BELOW COST SALES IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17043, 17049)

65. This count is filed as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Sections 17043 and 17049 of the California Business & Professions Code. The claim asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and arises from the same transactions, circumstances and operative facts as those claims.

66. Plaintiff hereby incorporates by reference paragraphs 2 through 23 and 29 through 34 as though fully set forth herein.

67. Since at least the spring of 1982, Arco has advertised for sale, offered for sale and sold to Arco-branded wholesalers, Arco-branded dealers, Arco-owned service stations and other customers in California, gasoline at less than the cost thereof to Arco, in violation of Cal. Bus. & Prof. Code §§ 17043 and 17049.

68. Such advertising, offers and actual sales have been made for the purpose of injuring competitors, including specifically the plaintiff and other independent marketers, and of destroying competition from the plaintiff and other independent marketers.

69. As a fully integrated oil company, Arco acquires crude oil from its own exploration and production operations at artificially and arbitrarily established intra-company transfer prices without the actual payment of money. Since at least April 1982, these so-called prices

have failed to reflect the actual value of such crude oil. Further, since at least the spring of 1982, Arco's transfer prices have failed to include the correct amount of wind-fall profits tax and other taxes owed by Arco on its crude oil.

70. For the foregoing and other reasons, pursuant to Cal. Bus. & Prof. Code § 17077, the cost of crude oil is presumed to be the prevailing market price for similar raw materials in the ordinary channels of trade in the locality or vicinity in which they were acquired at the time of the acquisition. By this measure, Arco sales at various locations in California have been below cost.

71. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT SIX

(LOCALITY DISCRIMINATION IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17040, 17049)

72. This count is brought as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Sections 17040 and 17049 of the California Business & Professions Code. The claim asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and arises from the same transactions, circumstances and operative facts as those claims.

73. Plaintiff hereby incorporates by reference paragraphs 2 through 23, 56, 57 and 60.

74. The discrimination described in paragraphs 56 and 57 above is done with the intent to destroy the

competition of plaintiff, who is a regular, established dealer in gasoline and of others who are or intend to become such dealers, and constitutes a locality discrimination in violation of Cal. Bus. & Prof. Code §§ 17040 and 17049.

75. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT SEVEN

(SECRET REBATES AND UNEARNED DISCOUNTS IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17045, 17049)

76. This count is filed as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Sections 17045 and 17049 of the California Business & Professions Code. The claim asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and arises from the same transactions, circumstances and operative facts as those claims.

77. Plaintiff hereby incorporates by reference paragraphs 2 through 23 and 36 as though fully set forth herein.

78. Since at least the spring of 1982, Arco has selectively and discriminatorily offered and secretly granted rebates, refunds, commissions and unearned discounts to some of its Arco-branded distributors and dealers in violation of Cal. Bus. & Prof. Code §§ 17045 and 17049.

79. Such rebates, refunds, commissions and unearned discounts have been extended through TVA's, TCA's and other devices.

80. Such rebates, refunds, commissions and unearned discounts have not been extended to all Arco-branded distributors and dealers who otherwise constitute classes of purchasers purchasing upon like terms and conditions.

81. Arco's selective and discriminatory payment and allowance of secret rebates, refunds, commissions and unearned discounts is intended to and does operate to the injury of competitors of Arco, including the plaintiff and other independent marketers and, further, tends to destroy competition between Arco or Arco-branded stations on the one hand and independent marketers of gasoline on the other.

82. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT EIGHT

(SOLICITATION OF VIOLATIONS AND ENFORCEMENT THROUGH THREATS, INTIMIDATION AND BOYCOTTS IN VIOLATION OF CAL. BUS. & PROF. CODE §§ 17046, 17047)

83. This count is brought as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Sections 17046 and 17047 of the California Business & Professions Code. The claim asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and

arises from the same transactions, circumstances and operative facts as those claims.

84. Plaintiff hereby incorporates by reference paragraphs 2 through 23, 37 and 38 as though fully set forth herein.

85. In undertaking the unlawful acts and practices alleged in each of the foregoing pendent Counts Four through Seven of this complaint, Arco has, in violation of Cal. Bus. & Prof. Code § 17047, solicited distributors and dealers of Arco-branded gasoline to commit and to participate jointly with Arco in the commission of illegal below cost sales, loss leader sales, locality discrimination, secret rebates and other violations of the California Unfair Practices Act alleged above.

86. Further, to effectuate the unlawful acts and practices alleged in each of the foregoing pendent counts of this complaint, Arco has used threats, intimidation and boycotts against distributors and dealers of Arco-branded gasoline in violation of Cal. Bus. & Prof. Code § 17046.

87. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT NINE

(PRICE DISCRIMINATION IN THE SALE OF MOTOR VEHICLE FUELS IN VIOLATION OF BUS. & PROF. CODE § 21200)

88. This count is filed as a claim pendent to Counts One through Three to secure damages and injunctive relief from defendant for its violations of Section 21200 of the California Business & Professions Code. The claim

asserted herein is ancillary to the federal antitrust claims set out in Counts One through Three and arises from the same transactions, circumstances and operative facts as those claims.

89. Plaintiff hereby incorporates by reference paragraphs 2 through 23, 35, 55 through 60 and 74 as though fully set forth herein.

90. Since at least the spring of 1982, Arco has discriminated directly or indirectly and continues to discriminate directly or indirectly in price between different purchasers of motor vehicle fuels of like grade and quality in violation of Cal. Bus. & Prof. Code § 21200.

91. Plaintiff hereby incorporates by reference paragraphs 40 and 41 as though fully set forth herein.

COUNT TEN

(UNFAIR COMPETITION IN VIOLATION OF BUS. & PROF. CODE § 17200 ET SEQ. AND COMMON LAW)

92. This count is filed as a claim pendent to Counts One through Three to secure restitution, injunctive relief and damages from defendant for its violations of Section 17200 *et seq.* of the California Business & Professions Code and the common law of unfair competition.

93. Plaintiff hereby incorporates by reference paragraphs 2 through 41, 46 through 48, 55 through 60, and 63 through 91 as though fully set forth herein.

94. Since at least the spring of 1982, Arco has been engaged in a deliberate plan and program to reduce and ultimately eliminate competition from independent marketers in California. This plan and program, and the

individual elements thereof, constitute violations of Cal. Bus. & Prof. Code § 17200 *et seq.* and the common law of unfair competition.

95. Arco's anticompetitive plan and program consist of numerous elements, not all of which are presently known to plaintiff but which include engaging in the acts, practices and violations of law alleged in Counts One through Nine above and described more particularly therein and incorporated herein by reference.

PRAYER FOR RELIEF

Wherefore, plaintiff prays that the Court grant it the following relief:

1. That the Court adjudge and decree that defendant has violated and is violating Sections 1 and 2 of the Sherman Act;
2. That the Court adjudge and decree that defendant has violated and is violating Section 2(a) of the Clayton Act;
3. That the Court adjudge and decree that defendant has violated and is violating California law as alleged in the pendent counts;
4. That a preliminary and permanent injunction be issued enjoining defendant and its officers, agents, employees and all persons in active concert and participation with it from engaging in the unlawful conduct and practices alleged in this complaint and that appropriate equitable relief be entered to dissipate the effects of the unlawful conduct and practices;

5. That judgment be entered on Counts One through Three for three times the amount of damages suffered by plaintiff as required by Section 4 of the Clayton Act, 15 U.S.C. § 15.

6. That judgment be entered on Counts Four through Nine for three times the amount of damages suffered by plaintiff as required by Cal. Bus. & Prof. Code §§ 16750, 17082 and 21202;

7. That judgment be entered on Count Ten awarding plaintiff restitution and damages on the injuries suffered by it as provided by Cal. Bus. & Prof. Code §§ 17200 *et seq.* and by common law;

8. That plaintiff be awarded its reasonable attorneys' fees and costs of suit as required by Section 4 of the Clayton Act, 15 U.S.C. § 15, and by Cal. Bus. & Prof. Code §§ 16750, 17082 and 21202;

9. That plaintiff be awarded legal interest on damages recovered;

10. That plaintiff be awarded such other and further relief as the Court may deem proper.

DATED: January 30, 1984.

BLECHER, COLLINS & WEINSTEIN
MAXWELL M. BLECHER
CONSUELO S. WOODHEAD
NORMAN PINE
SYLVIA P. GOTTLIEB

By /s/ Sylvia P. Gottlieb
SYLVIA P. GOTTLIEB
Attorneys for Plaintiff

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

DATED: January 30, 1984.

BLECHER, COLLINS & WEINSTEIN
MAXWELL M. BLECHER
CONSUELO S. WOODHEAD
NORMAN PINE
SYLVIA P. GOTTLIEB

By /s/ Sylvia P. Gottlieb
SYLVIA P. GOTTLIEB
Attorneys for Plaintiff

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ATLANTIC RICHFIELD'S ANSWER TO
FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL

Dated May 3, 1984
[Caption Omitted in Printing]

Defendant Atlantic Richfield Company ("Atlantic Richfield") by its attorneys, answers the First Amended Complaint herein (the "Complaint") as follows:

AS TO COUNT ONE

1. Denies each and every allegation contained in paragraph 1 of the Complaint, except admits that plaintiff purports to file this action under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26, for damages and injunctive relief for alleged violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.
2. Denies each and every allegation contained in paragraph 2 of the Complaint, except admits that Atlantic Richfield maintains an office, transacts business, and may be found within the Central District of California.
3. States that it is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 3 of the Complaint, except admits that USA does business in the state of California and elsewhere in the United States.
4. Denies each and every allegation contained in paragraph 4 of the Complaint, except admits that Atlantic

Richfield is a corporation duly organized and existing under the laws of the Commonwealth of Pennsylvania, that its principal office and place of doing business is located at 515 South Flower Street, Los Angeles, California 90071, and that it is engaged in the business of producing, purchasing and exchanging crude oil, refining crude oil into refined petroleum products, including gasoline, transporting crude oil and refined petroleum products, and selling refined petroleum products to resellers and end-users, and that it does business in the State of California and elsewhere in the United States.

5. Denies each and every allegation contained in paragraph 5 of the Complaint.
6. Admits the allegations contained in paragraph 6 of the Complaint.
7. Denies each and every allegation contained in paragraph 7 of the Complaint, except admits that the plaintiff purports to define the term "western United States" as used in the Complaint and that "PADD-V" includes the States of Arizona, Nevada, California, Oregon, Washington, Alaska, and Hawaii.
8. States that it is without knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraph 8 of the Complaint.
9. Denies each and every allegation contained in paragraph 9 of the Complaint, except admits that a number of enterprises which are among the largest industrial corporations in the United States and the world market gasoline.

10. Denies each and every allegation contained in paragraph 10 of the Complaint.

11. Denies each and every allegation contained in paragraph 11 of the Complaint, except admits that Atlantic Richfield sells gasoline to branded distributors, that some of this gasoline is resold to service stations which market it under the "ARCO" brand name, and that Atlantic Richfield has sold gasoline to unbranded distributors.

12. Denies each and every allegation contained in paragraph 12 of the Complaint, except admits that Atlantic Richfield sells gasoline directly to some ARCO-branded retail outlets.

13. Denies each and every allegation contained in paragraph 13 of the Complaint.

14. Denies each and every allegation contained in paragraphs 14 and 15 of the Complaint.

15. Denies each and every allegation contained in paragraph 16 of the Complaint, except states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations with respect to the adequacy of the plaintiff's refining capacity to meet its refined product needs.

16. Denies each and every allegation contained in paragraph 17 of the Complaint, except admits that on occasion plaintiff has purchased gasoline from Atlantic Richfield.

17. Denies each and every allegation contained in paragraph 18 of the Complaint.

18. Denies each and every allegation contained in paragraph 19 of the Complaint, except admits that Atlantic Richfield seeks and has sought to appeal to price-conscious consumers.

19. Denies each and every allegation contained in paragraphs 20 through 22 of the Complaint.

20. Denies each and every allegation contained in paragraph 23 of the Complaint, except admits that some crude oil and some refined petroleum products bought and sold by Atlantic Richfield have moved in interstate commerce.

21. Denies each and every allegation contained in paragraphs 24 through 34 of the Complaint.

22. Denies each and every allegation contained in paragraph 35 of the Complaint, except admits that plaintiff purports to describe certain acts more particularly in Count Three of the Complaint.

23. Denies each and every allegation contained in paragraph 36 of the Complaint, except admits that plaintiff purports to describe certain acts more particularly in Count Seven of the Complaint.

24. Denies each and every allegation contained in paragraphs 37 through 41 of the Complaint.

AS TO COUNT TWO

25. Denies each and every allegation contained in paragraph 42 of the Complaint, except admits that plaintiff purports to file Count Two and institute these proceedings under Sections 4 and 16 of the Clayton Act, 15

U.S.C. §§ 15, 26, for violations of Section 2 of the Sherman Act.

26. With respect to paragraph 43 of the Complaint, repeats and realleges each and every admission and denial made with respect to paragraph 2 of the Complaint by paragraph 2 hereof, with the same force and effect as though here set forth in full.

27. With respect to paragraph 44 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 3 through 5 of the Complaint by paragraphs 3 through 5 hereof, with the same force and effect as though here set forth in full.

28. With respect to paragraph 45 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 6 through 23 of the Complaint by paragraphs 6 through 20 hereof, with the same force and effect as though here set forth in full.

29. Denies each and every allegation contained in paragraph 46 of the Complaint.

30. Denies each and every allegation contained in paragraph 47 of the Complaint, and repeats and realleges each and every admission, denial and statement made with respect to paragraphs 27 through 38 of the Complaint by paragraphs 21 through 24 hereof, with the same force and effect as though here set forth in full.

31. Denies each and every allegation contained in paragraph 48 of the Complaint, and repeats and realleges each and every denial made with respect to paragraph 39

of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

32. With respect to paragraph 49 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT THREE

33. Denies each and every allegation contained in paragraph 50 of the Complaint, except admits that plaintiff purports to file Count Three and institute these proceedings for violations of Section 2(a) of the Clayton Act, commonly known as the Robinson-Patman Act, 15 U.S.C. § 13(a).

34. With respect to paragraph 51 of the Complaint, repeats and realleges each and every admission and denial made with respect to paragraph 2 of the Complaint by paragraph 2 hereof, with the same force and effect as though here set forth in full.

35. Denies each and every allegation contained in paragraph 52 of the Complaint.

36. With respect to paragraph 53 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 3 through 5 of the Complaint by paragraphs 3 through 5 hereof, with the same force and effect as though here set forth in full.

37. With respect to paragraph 54 of the Complaint, repeats and realleges each and every admission, denial

and statement made with respect to paragraphs 6 through 38 of the Complaint by paragraphs 6 through 24 hereof, with the same force and effect as though here set forth in full.

38. Denies each and every allegation contained in paragraph 55 of the Complaint, except admits that Atlantic Richfield has established numerous price zones in various parts of the United States, including more than 100 such price zones in California.

39. Denies each and every allegation contained in paragraphs 56 through 60 of the Complaint.

40. With respect to paragraph 61 of the Complaint, repeats and realleges each and every denial made with respect to paragraph 39 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

41. With respect to paragraph 62 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT FOUR

42. Denies each and every allegation contained in paragraph 63 of the Complaint, except admits that plaintiff purports to file this Count Four as a claim pendent to Counts One through Three.

43. With respect to paragraph 64 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through

41 of the Complaint by paragraphs 2 through 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT FIVE

44. Denies each and every allegation contained in paragraph 65 of the Complaint, except admits that plaintiff purports to file Count Five as a claim pendent to Counts One through Three.

45. With respect to paragraph 66 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through 23 and 29 through 34 of the Complaint by paragraphs 2 through 21 hereof, with the same force and effect as though here set forth in full.

46. Denies each and every allegation contained in paragraphs 67 through 70 of the Complaint.

47. With respect to paragraph 71 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT SIX

48. Denies each and every allegation contained in paragraph 72 of the Complaint, except admits that plaintiff purports to bring Count Six as a claim pendent to Counts One through Three.

49. With respect to paragraph 73 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through 23, 56, 57 and 60 of the Complaint by paragraphs 2 through 20 and 39 hereof, with the same force and effect as though here set forth in full.

50. Denies each and every allegation contained in paragraph 74 of the Complaint.

51. With respect to paragraph 75 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT SEVEN

52. Denies each and every allegation contained in paragraph 76 of the Complaint, except admits the plaintiff purports to file Count Seven as a claim pendent to Counts One through Three.

53. With respect to paragraph 77 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through 23 and 36 of the Complaint by paragraphs 2 through 20 and 23 hereof, with the same force and effect as though here set forth in full.

54. Denies each and every allegation contained in paragraphs 78 through 81 of the Complaint.

55. With respect to paragraph 82 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by

paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT EIGHT

56. Denies each and every allegation contained in paragraph 83 of the Complaint, except admits the plaintiff purports to file Count Eight as a claim pendent to Counts One through Three.

57. With respect to paragraph 84 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through 23, 37 and 38 of the Complaint by paragraphs 2 through 20 and 24 hereof, with the same force and effect as though here set forth in full.

58. Denies each and every allegation contained in paragraphs 85 and 86 of the Complaint.

59. With respect to paragraph 87 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT NINE

60. Denies each and every allegation contained in paragraph 88 of the Complaint, except admits the plaintiff purports to file Count Nine as a claim pendent to Counts One through Three.

61. With respect to paragraph 89 of the Complaint, repeats and realleges each and every admission, denial

and statement made with respect to paragraphs 2 through 23, 35, 55 through 60 and 74 of the Complaint by paragraphs 2 through 20, 22, 38, 39, and 50 hereof, with the same force and effect as though here set forth in full.

62. Denies each and every allegation contained in paragraph 90 of the Complaint.

63. With respect to paragraph 91 of the Complaint, repeats and realleges each and every denial made with respect to paragraphs 40 and 41 of the Complaint by paragraph 24 hereof, with the same force and effect as though here set forth in full.

AS TO COUNT TEN

64. Denies each and every allegation contained in paragraph 92 of the Complaint, except admits the plaintiff purports to file Count Ten as a claim pendent to Counts One through Three.

65. With respect to paragraph 93 of the Complaint, repeats and realleges each and every admission, denial and statement made with respect to paragraphs 2 through 41, 46 through 48, 55 through 60, and 63 through 91 of the Complaint by paragraphs 2 through 24, 29 through 31, 38 through 39, and 42 through 63 hereof, with the same force and effect as though here set forth in full.

66. Denies each and every allegation contained in paragraph 94 of the Complaint.

67. Denies each and every allegation contained in paragraph 95 of the Complaint and repeats and realleges each and every admission, denial and statement made

with respect to Counts One through Nine of the Complaint by paragraphs 1 through 63 hereof, with the same force and effect as though here set forth in full.

FIRST AFFIRMATIVE DEFENSE

68. The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

69. This Court lacks jurisdiction over the subject matter of some or all of the claims asserted in the Complaint.

THIRD AFFIRMATIVE DEFENSE

70. Plaintiff lacks standing to maintain some or all of the claims asserted in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

71. Some or all of the claims asserted in the Complaint are barred in whole or in part by the applicable statutes of limitations.

FIFTH AFFIRMATIVE DEFENSE

72. The Complaint fails to state any basis upon which equitable relief can be granted.

SIXTH AFFIRMATIVE DEFENSE

73. Some or all of the claims asserted in the Complaint are barred in whole or in part by laches, waiver, estoppel, unclean hands or want of equity.

SEVENTH AFFIRMATIVE DEFENSE

74. To the extent that some or all of the claims asserted in the Complaint are concerned with matters that Congress has by statute entrusted to federal administrative agencies or that the State of Alaska has entrusted to its administrative agencies, they are barred.

EIGHTH AFFIRMATIVE DEFENSE

75. Atlantic Richfield has not violated Section 2 of the Sherman Act, 15 U.S.C. § 2, because its market position has resulted from business initiative and acumen, efficient operations, vigorous competition and the operation of governmental, economic, technical and other factors inherent in the nature of the petroleum industry.

NINTH AFFIRMATIVE DEFENSE

76. Any alleged injury suffered by plaintiff caused by any act of Atlantic Richfield or any alleged co-conspirators is not an injury of the type that the antitrust laws were designed to prevent.

TENTH AFFIRMATIVE DEFENSE

77. Any lost sales, lost profits, increased costs, loss in value of its business or in the goodwill thereof, or

other alleged injury suffered by plaintiff was caused by plaintiff's inability to compete effectively in the market for petroleum products and not by any act of Atlantic Richfield or any alleged co-conspirators.

ELEVENTH AFFIRMATIVE DEFENSE

78. Atlantic Richfield has not violated Section 1 or Section 2 of the Sherman Act, 15 U.S.C. §§ 1, 2, because its prices were set at all times to meet the prices then charged by competitors.

79. Atlantic Richfield has not violated Section 2(a) of the Clayton Act, commonly known as the Robinson-Patman Act, 15 U.S.C. § 13(a), or any of the provisions of California law identified in Counts Four through Ten. In accordance with Section 2(b) of the Clayton Act, commonly known as the Robinson-Patman Act, 15 U.S.C. § 13(b), and provisions of California law including Cal. Bus. & Prof. Code §§ 21200 and 17050, Atlantic Richfield's prices at all times were set in good faith to meet the prices then charged, or in good faith believed to be charged, by competitors, and, in accordance with the above-cited provisions of California law, such prices were offered to all customers of Atlantic Richfield in competition with one another.

TWELFTH AFFIRMATIVE DEFENSE

80. Atlantic Richfield has not violated Section 2(a) of the Clayton Act, commonly known as the Robinson-Patman Act, 15 U.S.C. § 13(a), or any of the provisions of California law identified in Counts Four through Ten,

because Atlantic Richfield's prices at all times were set in good faith to make due allowance for differences in the cost of manufacture, sale or delivery resulting from the differing methods by, and quantities in which, Atlantic Richfield sold or delivered its products.

THIRTEENTH AFFIRMATIVE DEFENSE

81. The Complaint should be dismissed for failure to join as parties additional persons required to be joined under Rule 19 of the Federal Rules of Civil Procedure.

WHEREFORE, Atlantic Richfield demands judgment dismissing the Complaint, together with the costs and disbursements of this action.

Dated: May 3, 1984

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Attorneys for Defendant
 Atlantic Richfield Company

By /s/ Philip H. Curtis
 Philip H. Curtis

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLAINTIFF'S RESPONSES TO
DEFENDANT ATLANTIC RICHFIELD
COMPANY'S FIRST SET OF INTERROGATORIES

Dated July 7, 1984
[Caption Omitted in Printing]

* * *

INTERROGATORY NO. 5:

With respect to the allegation contained in paragraph 17 of the Complaint that "[p]laintiff and its USA stations compete directly with Arco and Arco-branded stations at many locations in California and the western United States," identify each USA retail gasoline station which you contend competes directly with Atlantic Richfield or one or more Arco-branded stations and as to each USA station identify each Arco-branded station with which it competes directly.

RESPONSE TO INTERROGATORY NO 5:

It is the plaintiff's position that all USA stations compete with and are affected to some extent by the conduct of Arco and Arco-branded stations in the relevant market. Plaintiff is currently in the process of reviewing the status of those Arco and Arco-branded stations that are of closest geographic proximity to USA stations and, therefore, may be considered to have the most direct and severe competitive impact.

* * *

INTERROGATORY NO. 9:

For each of the allegations of a "continuing agreement," "understanding" and "concert of action" contained in paragraph 25 of the Complaint, the allegations of a "resale price maintenance scheme," of an "agreement," and of "control by Arco of the resale prices" contained in paragraph 27 of the Complaint, the allegations that Atlantic Richfield "has solicited its dealers and distributors to participate or acquiesce in the conspiracy," and that it "has used threats, intimidation and coercion to secure compliance with its terms" contained in paragraph 37 of the Complaint, and the allegation that "the price of gasoline has been artificially fixed, maintained and stabilized" contained in paragraph 39(a) of the Complaint, separately state each fact and identify each document and each witness having information which you contend supports the allegation, state whether you intend to prove the truth of the allegation on a dealer-by-dealer basis, and, if you do not intend so to prove the allegation, state how you intend to prove it.

RESPONSE TO INTERROGATORY NO. 9:

Plaintiff objects to this interrogatory on the grounds that it is premature, unduly burdensome and harassing, as stated in the opening General Objections of this response, and on the further grounds that it is overly broad and a transparent attempt, with its multiple questions, to circumvent Local Rule 8.2.1 limiting the number of interrogatories that a party may serve on another. Without waiver of its objections, plaintiff answers that it will seek to prove the existence of a nationwide or regional conspiracy without proving the participation of

each individual dealer and that damages may be shown on other than a dealer-by-dealer basis. Plaintiff reserves the right to prove conspiracy and damages by any legally sufficient method that the evidence may support.

* * *

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLAINTIFF'S SUPPLEMENTAL
RESPONSES TO DEFENDANT ATLANTIC RICHFIELD
COMPANY'S FIRST SET OF INTERROGATORIES

Dated August 15, 1985
[Caption Omitted in Printing]

* * *

SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 5:

As USA has previously stated, USA contends that all of its stations compete with and are affected by the conduct of ARCO and ARCO-branded stations. Due to the nature of ARCO's conduct as alleged in the Complaint, USA believes that the USA stations in closest geographic proximity to ARCO-branded stations may have been most directly and severely injured by ARCO's practices. USA has not completed its investigation of its damages caused by ARCO's conduct. In addition, ARCO has not yet produced all documents requested by USA relating, among other things, to ARCO's pricing practices and pricing zones and this has hampered USA's investigation on this subject. Finally, USA's position with respect to the impact and damage to USA as a result of ARCO's conduct and the conduct of ARCO-branded stations will be the subject of expert investigation and analysis that has not yet begun. Therefore, USA cannot definitively respond to this interrogatory at this time. However, USA has produced to ARCO for ARCO's information, a list of the USA stations in closest geographic proximity to ARCO-

branded stations, which stations USA believes may have been most directly impacted by the conduct alleged in the Complaint. The list was prepared by USA by identifying ARCO-branded stations considered by USA management to be most competitive with USA stations. The address information concerning the listed ARCO stations was drawn from a list of the identities and locations of ARCO-branded stations market produced by ARCO in this litigation and from the observations of USA field personnel. An updated and more complete list reflecting USA and ARCO stations open and in operation as of mid-August, 1985 is attached hereto as Exhibit "A" and is incorporated in this supplemental response by this reference.

* * *

**SUPPLEMENTAL RESPONSE TO INTERROGATORY
NO. 9:**

In its December 6, 1984 letter to USA's counsel ("the Thorner letter"), ARCO reformulated Interrogatory No. 9 as follows:

"9. Separately state each fact and identify each document and each witness having information which you contend supports your contention that a resale price maintenance conspiracy involving Atlantic Richfield exists."

USA incorporates by reference and reasserts its general and specific objections to original Interrogatory No. 9 as equally applicable to the interrogatory as restated above. USA believes that its original response to the interrogatory was full and adequate. Nevertheless, without waiving such objections, USA additionally responds as follows:

USA has thus far based its contentions relating to the retail price maintenance conspiracy alleged in the complaint upon the inferences reasonably drawn from the pattern of ARCO's pricing conduct and the competitive price allowances given by ARCO to its dealers, that there was an agreement that the dealers to whom the allowances were given would lower their prices to undercut or meet the prices of independent dealers within the same ARCO pricing zones and that the allowances inevitably and inexorably caused them to do so. USA executives, particularly Mark Conant, were made aware by field personnel that ARCO stations were systematically pricing their gasolines below the prices of USA and other independents on an apparently fixed margin basis, keyed directly to the prices charged by the independents and apparently without regard to the ARCO dealers' costs or profits from such sales. Based upon the accumulated knowledge and experience of USA management that the major oil companies are able to and do induce and/or coerce their dealers to follow suggested prices, USA concluded that there was an express or implied understanding and conspiracy that the competitive price allowances being offered by ARCO were provided for the purpose and with the effect of having dealers set prices which would eliminate independents from the market.

USA is continuing to investigate and seek discovery of information related to its claims and continues to reserve the right to prove conspiracy and damages by any legally sufficient method that the evidence may support.

* * *

EXHIBIT "A"

<u>USA Station No. and Location</u>	<u>ARCO Station and Location</u>
1 - 9010 E. Broadway Temple City, CA	7280 Rosemead Temple City, CA
	1386 La Tunas Dr. Temple City, CA
4 - 422 S. Azusa Ave. Azusa, CA	100 N. Azusa Azusa, CA
	468 Arrow Hwy. Azusa, CA
5 - 340 N. Citrus Azusa, CA	701 S. Grand Azusa, CA
	468 Arrow Hwy Azusa, CA
6 - 4405 N. Main Baldwin Park, Ca	4258 N. Main Baldwin Park, CA
	13758 Los Angeles Baldwin Park, CA
12 - 1542 W. Willow Long Beach, CA	2601 Santa Fe Ave. Long Beach, CA
	200 Willow St. Long Beach, CA
20 - 2601 Road 20 San Pablo, CA	2550 Mission Blvd. San Pablo, CA
	12890 San Pablo Ave. San Pablo, CA
30 - 20354 E. Arrow Hwy. Covina, CA	1108 Grand Covina, CA
	701 S. Grand Covina, CA
	10306 Arrow Hwy. Covina, CA

<u>USA Station No. and Location</u>	<u>ARCO Station and Location</u>
40 - 3501 Jefferson Napa, CA	2303 Jefferson Napa, CA
51 - 3618 Baldwin El Monte, CA	9824 Flair Dr. El Monte, CA
	9666 Valley Blvd. El Monte, CA
55 - 1801 McHenry Ave. Modesto, CA	2101 Tully Rd. Modesto, CA
	1404 McHenry Modesto, CA
	2519 Coffee Modesto, CA
59 - 2651 N. Ventura Ave. Port Hueneme, CA	1050 N. Ventura Port Hueneme, CA
65 - 2500 W. Lodi Lodi, CA	501 Kettleman Ln. Lodi, CA
	801 Lower Sacramento Rd. Lodi, CA
70 - 25235 San Jacinto St. Hemet, CA	40730 W. Florida Hemet, CA
71 - 2661 E. Thompson Blvd. Ventura, CA	2580 Thompson Ventura, CA
	605 S. Mills Ventura, CA
72 - 794 N. Main Corona, CA	785 N. Main Corona, CA
73 - 15120 Hesperian Blvd. San Leandro, CA	15135 Hesperian San Leandro, CA
57 - 10700 MacArthur Blvd. Oakland, CA	10600 McCarter Blvd. Oakland, CA

<u>USA Station No. and Location</u>	<u>ARCO Station and Location</u>
58 - 737 Tennessee Vallejo, CA	640 Broadway Vallejo, CA
75 - 3625 W. Mineral King Visalia, CA	3611 S. Mooney Visalia, CA
76 - 5411 100th St. Tacoma, WA	10116 S. Tacoma Way Tacoma, WA
82 - 19443 W. Soledad Saugus, CA	26409 Sierra Hwy Saugus, CA
97 - 1802 Santa Monica Blvd. Santa Monica, CA	1801 Lincoln Santa Monica, CA
	1819 Cloverfield Santa Monica, CA
98 - 4395 Glencoe Ave. Marina del Rey, CA	2003 Lincoln Venice, CA
101 - 400 Greenbrae Dr. Sparks, NV	2191 Pyramid Sparks, NV
102 - 200 Serra Way Milpitas, CA	43 So. 4350 Abbot Ave. Milpitas, CA
103 - 1091 E. Capitol Expressway San Jose, CA	1100 Tully Rd. San Jose, CA
	2375 Quimby San Jose, CA
	3147 Center San Jose, CA
115 - 705 Rainier Ave. S. Renton, WA	621 Rainier Ave.S. Renton, WA
	161 Rainier Ave.S. Renton, WA
116 - 303 Southwest 148th Burien, WA	148 1st Ave.S.W. Burien, WA

<u>USA Station No. and Location</u>	<u>ARCO Station and Location</u>
120 - 1790 E. Pleasant Valley Rd. Oxnard, CA	4000 S. Saviers Oxnard, CA
121 - 4991 Stockton Blvd. Sacramento, CA	5399 Fruitridge Sacramento, CA
125 - 2633 Via Campo Montebello, CA	2430 Garfield Ave. Montebello, CA
	2813 Beverly Blvd. Montebello, CA
126 - 110 E. Foothill Blvd. Pomona, CA	539 E. Foothill Pomona, CA
133 - 538 W. Adams Blvd. Los Angeles, CA	3775 S. Vermont Los Angeles, CA
	504 S. Figueroa Los Angeles, CA
137 - 8659 Jamacha Rd. Spring Valley, CA	1051 Sweetwater Rd. Spring Valley, CA
141 - 14600 Edwards Ave. Westminster, CA	6982 Westminister Westminster, CA
	15501 Edwards St. Westminster, CA
182 - 2929 N. Blackstone Blvd. Fresno, CA	3703 Blackstone Fresno, CA
184 - 404 S. Saratoga Ave. San Hose, CA	401 Kelly San Jose, CA
188 - 920 Lakeway Dr. Bellingham, WA	125 Samish Way Bellingham, WA
189 - 8530 Evergreen Way Everett, WA	6500 Evergreen Way Everett, WA

<u>USA Station No.</u> <u>and Location</u>	<u>ARCO Station</u> <u>and Location</u>
190 - 19420 44th West Lynnwood, WA	19612 Hwy 99 Lynwood, WA
	4812 196th St. Lynnwood, WA
	3701 196th St. Lynwood, WA
192 - 4505 S. 19th St. Tacoma, WA	6802 6th Ave. Tacoma, WA
	1201 S. Union Tacoma, WA
193 - 7250 Pacific Ave. Tacoma, WA	5232 Pacific Ave. Tacoma, WA
201 - 735 N. Main St. Yreka, CA	120 E. Center Yreka, CA
207 - 2299 Oddie Blvd. Sparks, NV	2240 B St. Sparks, NV
	1701 B St. Sparks, NV
208 - 2281 El Camino Ave. Sacramento, CA	2200 El Camino Sacramento, CA
210 - 603 Lincoln Ave. Napa, CA	198 Soscol Ave. Napa, CA
212 - 3880 S. El Camino Real San Mateo, CA	470 Ralston Ave. San Mateo, CA
214 - 19990 Stevens Creek Rd. Cupertino, CA	10550 De安za Blvd. Cupertino, CA
215 - 1030 E. Alisal St. Salinas, CA	150 Kern St. Salinas, CA

<u>USA Station No.</u> <u>and Location</u>	<u>ARCO Station</u> <u>and Location</u>
216 - 4194 E. Shields Ave. Fresno, CA	4190 Cedar Fresno, CA
	4595 E. Clinton Fresno, CA
	1625 N. Chestnut Fresno, CA
223 - 5040 S. Saviers Rd. Oxnard, CA	4000 S. Saviers Rd. Oxnard, CA
224 - 14900 Burbank Blvd. Van Nuys, CA	555 Van Nuys Blvd. Van Nuys, CA
	14856 Magnolia Van Nuys, CA
	14903 Victory Van Nuys, CA
226 - 2007 N. Durfee Ave. S. El Monte, CA	10904 Rush St. S. El Monte, CA
228 - 11806 S. Valley View Whittier, CA	13444 Telegraph Rd. Whittier, CA
	14400 Telegraph Rd. Whittier, CA
234 - 5122 W. First St. Santa Ana, CA	10721 Westminister Garden Grove, CA
235 - 907 E. 7th Avenue Long Beach, CA	3605 E. 7th St. Long Beach, CA
	3201 E. 7th St. Long Beach, CA
237 - 14595 7th St. Victorville, CA	14485 7th St. Victorville, CA
245 - 411 S. Escondido Blvd. Escondido, CA	300 W. Washington Escondido, CA

<u>USA Station No. and Location</u>	<u>ARCO Station and Location</u>
246 - 7505 Broadway Lemon Grove, CA	6901 Federal Blvd. Lemon Grove, CA
	6098 University Ave. Lemon Grove, CA
	3775 Massachusetts Lemon Grove, CA
	7594 University Ave. Lemon Grove, CA
	8001 Broadway Lemon Grove, CA
252 - 4418 E. Central Ave. Camarillo, CA	650 Arniell Camarillo, CA
253 - 2131 E. Vista Way Vista, CA	745 S. Santa Fe Vista, CA
254 - 921 Black Lake Blvd. Olympia, WA	2400 Harrison Ave NW Olympia, WA
258 - 390 W. Shaw Ave. Clovis, CA	525 E. Shaw Ave. Clovis, CA
	1216 Barstow Ave. Clovis, CA
259 - 901 N. "H" St. Lompoc, CA	538 N. "H" St. Lompoc, CA
256 - 1640 Moorpark Rd. Thousand Oaks, CA	Moorpark Rd. Thousand Oaks, CA
309 - 22727 Bothell Hwy Bothel, WA	Highway 527 Bothel, WA

[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STATEMENT OF UNCONTROVERTED FACTS
AND CONCLUSIONS OF LAW IN SUPPORT OF
PARTIAL SUMMARY JUDGMENT

Dated March 31, 1986
[Caption Omitted in Printing]

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BY ORDER OF THIS COURT

Defendant Atlantic Richfield Company ("Atlantic Richfield") submits this Statement Of Uncontroverted Facts And Conclusions Of Law pursuant to Local Rule 7.14.1 in support of its Motion For Partial Summary Judgment.

UNCONTROVERTED FACTS

The Parties

1. Plaintiff USA Petroleum Company ("USA Petroleum") is a limited partnership engaged in the marketing of gasoline and other refined petroleum products in California and elsewhere. USA Petroleum is an independent marketer and markets gasoline under the brand name "USA". (Am. Comp. ¶3.)

2. Defendant Atlantic Richfield is a corporation engaged in, among other things, the refining and marketing of gasoline and other refined products in California and elsewhere. Atlantic Richfield is a major integrated oil company. (Am. Comp. ¶4.) Atlantic Richfield markets

gasoline at the wholesale level to, among others, distributors and dealers which sell it under the brand name "ARCO." (Am. Comp. ¶¶11-12.)

Plaintiff's Sherman Act § 2 Claim

3. Plaintiff charges Atlantic Richfield with violating Sherman Act § 2 by attempting to monopolize "the distribution and sale of gasoline in and to the gasoline discount market in California and the western United States." (Am. Comp. ¶46.) Plaintiff alleges that there is a "dangerous probability" that Atlantic Richfield will succeed in its attempt to monopolize this "gasoline discount market." (Am. Comp. ¶47.)

4. Gasoline retailers sell gasoline to consumers under "major-brands" or "minor-brands." Plaintiff contends that the "gasoline discount market" consists of sellers identified by the Lundberg Survey, Inc. as "minors" or "non-majors" plus, beginning April 1982, ARCO-brand sellers, which then allegedly entered the discount market in competition with these "minors" or "non-majors." (Plaintiff's Supplemental Response to Interrogatory 3.)

5. As set out more fully below, no such "gasoline discount market" exists as a separate and distinct market removed from the competition of the major-brand sellers. All gasoline retailers, whether major-brand or minor-brand, are in competition with one another in the same market.

Major- and Minor-Brand Gasoline Is Interchangeable

6. Consumers can use major-brand and minor-brand gasoline reasonably interchangeably for the same purposes. While gasoline of different brands may vary slightly, generally applicable government and industry specifications essentially standardize the chemical characteristics affecting gasoline quality. (Reilly Dec. ¶¶5-7; Turner Dec. ¶¶5-11.)

7. Major and independent refiners and marketers freely buy, sell and exchange gasoline among each other. (Reilly Dec. ¶7; Turner Dec. ¶¶12-18; Am. Comp. ¶11.)

Correlation of Major- and Minor-Brand Prices

8. The prices of major-brand and minor-brand gasoline exhibit patterns of closely parallel movement, as described more fully below. These highly correlated prices show that buyers and sellers of gasoline consider that major-brand and minor-brand gasoline sales occur in a single market.

9. The correlations of Lundberg price data for the Los Angeles area from the period September 24, 1982 to March 31, 1984 establish that the prices and price changes of major-brand and minor-brand gasoline were highly correlated during the period at issue in this lawsuit.

a. The high correlation between major-brand and minor-brand prices is shown by the average correlation coefficient of .936 for correlations between the absolute levels of these prices. (Johnston Dec. ¶28 and Table 1, Part A; see Stigler Dec. ¶33.)

b. The high correlation between major-brand and minor-brand prices is also shown by the average

correlation coefficients for correlations between major-brand and minor-brand price changes, which ranged from .940 (for one period price differences) to .977 (for four period price differences). (Johnston Dec. ¶29 and Table 1, Part A.)

c. The significance of these high correlations in establishing that major-brand and minor-brand sales are in one market is confirmed by the benchmark averages of coefficients within the major-brand price series and within the minor-brand price series, which differed only triflingly from the averages of coefficients between major-brand and minor-brand prices. (Johnston Dec. ¶¶26-29; Table 1, Part A; Stigler Dec. ¶34.)

d. The additional sets of calculations which tested for the effects of crude oil price changes, inflation and serial correlation provide assurance that the high results were not the product of some factor other than the actual relationship between the prices correlated. (Johnston Dec. ¶¶30-38 and Table 1, Part B; Stigler Dec. ¶¶36-37.)

Other Indicia of Competition

10. Participants in the oil industry recognize in economically significant respects that the major-brand and minor-brand retailers compete with each other in the same market. Both Atlantic Richfield and USA Petroleum regularly surveyed the prices at major-brand and minor-brand stations for the purpose of determining their gasoline prices. (Paula Johnston Dec. ¶¶3-5, 8-9 and Ex. A; Reilly Dec. ¶¶8, 10-12 and Exs. A, B.) The Lundberg market share reports show the respective market shares of major and minor brands only as a percentage of the retail market as a whole and not of the separate markets for which plaintiff contends. (Atlantic Richfield App. E.)

11. The allegedly unique characteristics of minor-brand sellers that plaintiff argues justify placing them in a separate market, in fact, are not unique to such sellers. Lundberg data show a substantial overlap between the prices charged by these "discount" sellers and the prices charged at major-brand stations. (Nelson Dec. ¶¶2-5 and Tables 1-3.) The other marketing practices cited as characteristic of the "discount" market--cash-only sales and self-service vendors--are also widely used by major-brand retailers. (Nelson Dec. ¶¶6-7 and Tables 4-6.)

Insufficiency of Atlantic Richfield's Market Share

12. Atlantic Richfield's share of the retail gasoline market in California and Washington, the states in which USA Petroleum contends it has been injured by Atlantic Richfield's conduct, has not exceeded 17 percent during the period at issue in this lawsuit. (Reilly Dec. ¶13.) This market share, particularly in light of the competition of the other major oil companies in the relevant market, is clearly insufficient to present a danger of monopolization.

Potential Entry by Other Majors into the Alleged "Discount" Market

13. A fundamental premise of USA Petroleum's case is that in April 1982 Atlantic Richfield entered the alleged "discount" market, previously occupied only by independent retailers, by adopting a no-credit, low-price marketing strategy. (Am. Comp. ¶19.) Assuming *arguendo* the existence of a separate "discount" market, Atlantic Richfield's ability to enter this market by adopting such a

strategy implies the ability of the other major oil companies to do likewise. Plaintiff has not identified any barrier to such entry by a major oil company. Thus, each of the other major oil companies must be considered a potential entrant into the alleged "discount" market.

14. The possibility of entry by the other major oil companies into the alleged "discount" market would effectively preclude Atlantic Richfield from exercising monopoly power even if Atlantic Richfield achieved a dominant share of that market.

Plaintiff's Sherman Act § 1 Claim

15. Plaintiff claims damages in its capacity as a competitor of ARCO-brand retailers from alleged vertical conspiracies between Atlantic Richfield and ARCO-branded distributors and dealers to set retail prices at "artificially low and uncompetitive levels." (Am. Comp. ¶¶40-41.)

CONCLUSIONS OF LAW

1. No genuine issue of material fact exists with respect to defendant Atlantic Richfield's motion for partial summary judgment, and it is therefore appropriate for disposition pursuant to Fed. R. Civ. P. 56.

Plaintiff's Sherman Act § 2 Claim

2. Sherman Act § 2 requires as an essential element of a claim of attempted monopolization proof that there is a dangerous probability that the defendant will achieve a

monopoly of a properly defined market. E.g., *Walker Process Equipment, Inc. v. Food Machinery & Chemical Corp.*, 382 U.S. 172 (1965); *Airweld, Inc. v. Airco, Inc.*, 742 F.2d 1184, 1192 (9th Cir. 1984) cert. denied, 105 S. Ct. 1184 (1985); *Foremost Pro Color, v. Eastman Kodak Co.*, 703 F.2d 534, 543-44 (9th Cir. 1983) cert. denied, 465 U.S. 1038 (1984). See *United States v. Grinnel Corp.*, 384 U.S. 563, 570-73 (1966).

3. A relevant product market for antitrust purposes must include all commodities that are reasonably interchangeable either in use by consumers or in production by manufacturers. E.g., *United States v. E. I. du Pont de Nemours & Co.*, 351 U.S. 377, 394-96 (1956); *United States v. Columbia Steel Co.*, 334 U.S. 495, 510-11 (1948); *Twin City Sportservice, Inc. v. Charles O. Finley & Co.*, 512 F.2d 1264, 1271 (9th Cir. 1975). Among the "practical indicia" that may be used in market determination are "peculiar characteristics and uses" of the commodities, requirements for "unique production facilities," and "distinct customers, distinct prices," and "sensitivity to price changes." *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962).

4. The tendency of the prices of two commodities to "move together in response to the same stimuli" indicates that the commodities occupy the same market. *United States v. Consolidated Foods Corp.*, 455 F. Supp. 108, 125, 128 n.7 (E.D. Pa. 1978). See, e.g., *United States v. Aluminum Co. of America*, 377 U.S. 271, 276 (1964); *United States v. Kennecott Copper Corp.*, 231 F. Supp. 95, 100-101 (S.D.N.Y. 1964), aff'd per curiam, 381 U.S. 414 (1965); *American Crystal Sugar Co. v. Cuban-American Sugar Co.*, 152 F. Supp. 387, 391 (S.D. N.Y. 1957), aff'd, 259 F.2d 524 (2nd Cir. 1958).

5. The industry's division of sellers into discrete groupings or classes, or industry recognition of the distinct characteristics of different types of sellers, is relevant to market definition only where "economically significant from the viewpoint of competition." *ITT Corp. v. GTE Corp.*, 518 F.2d 913, 932-33 (9th Cir. 1975). For example, the classification of sellers as "premium," "discount" or other price/quality descriptions lacks the independent economic significance required for use in defining markets. E.g., *Brown Shoe, supra*, 370 U.S. at 326; *Carter Hawley Hale Stores, Inc. v. Limited, Inc.*, 587 F. Supp. 246 (C.D. Cal. 1984); *United States v. Jos. Schlitz Brewing Co.*, 253 F. Supp. 129 (N.D. Cal.), *aff'd per curiam*, 385 U.S. 37 (1966).

6. All brands of gasoline compete in a single market. Thus, the relevant product market in this action, in which the likelihood of Atlantic Richfield achieving a monopoly must be evaluated, is the retail gasoline market in its entirety, including both major-brand and minor-brand retailers. Plaintiff's alleged "discount" gasoline market does not satisfy the requirements of a distinct market or submarket for antitrust purposes. *See, e.g., Edward J. Sweeny & Sons, Inc. v. Texaco, Inc.*, 637 F.2d 105, 117 (3rd Cir. 1980), *cert. denied*, 451 U.S. 911 (1981); *Mullis v. ARCO Petroleum Corp.*, 502 F.2d 290, 296 (7th Cir. 1974); *see United States v. Phillips Petroleum Co.*, 367 F. Supp. 1226, 1262 (C.D. Cal. 1973), *aff'd mem. sub nom. Tidewater Oil Co. v. United States*, 418 U.S. 906 (1974).

7. A firm that controls only twenty percent or less of the relevant market, and that must compete against other large competitors with a substantial share of the

market, as a matter of law presents no dangerous probability of successful monopolization. *USA Petroleum Co. v. Atlantic Richfield Co.*, 577 F. Supp. 1296, 1304 (C.D. Cal. 1983); *Robinson v. Magovern*, 521 F. Supp. 842, 891 (W.D. Pa. 1981); *Levitch v. Columbia Broadcasting System, Inc.*, 495 F. Supp. 649, 668 (S.D.N.Y. 1980), *aff'd*, 697 F.2d 495 (2nd Cir. 1983).

8. There is, as a matter of law, no dangerous probability of monopolization of a market for which there are no barriers to entry by a substantial group of significant potential competitors. E.g., *General Business Systems v. North American Philips Corp.*, 699 F.2d 965, 974 n.2 (9th Cir. 1983); *In re Municipal Bond Reporting Antitrust Litigation*, 672 F.2d 436, 441 (5th Cir. 1982). The majors other than Atlantic Richfield are such potential new competitors in the "discount" gasoline market, assuming *arguendo* that such a market exists.

9. The Ninth Circuit's *Lessig* line of cases permits a plaintiff to satisfy only its initial burden of coming forward with direct evidence of the dangerous probability element of attempted monopolization by proof of *per se* or predatory conduct. The defendant rebuts the *Lessig* inference by introducing evidence negating the likelihood of monopolization and thereby eliminates the inference as a basis to establish a genuine issue for trial. *William Inglis & Sons Baking Co. v. ITT Continental Baking Co.*, 668 F.2d 1014, 1029-30 (9th Cir. 1981), *cert. denied*, 459 U.S. 825 (1982); *Janich Bros., Inc. v. American Distilling Co.*, 570 F.2d 848, 854 (9th Cir. 1977), *cert. denied*, 439 U.S. 829 (1978); *USA Petroleum Co., supra*, 577 F. Supp. at 1304; *see Fed. R. Evid. 301*.

10. Plaintiff USA Petroleum's claims under Sherman Act section 2 must be dismissed because there is no genuine issue of material fact disputing defendant's factual showing that there is no dangerous probability of monopolization and because that showing rebuts any *Lessig* inference of dangerous probability that may arise from the alleged *per se* or predatory conduct.

Plaintiff's Sherman Act § 1 Claim

11. A plaintiff seeking damages under Section 4 of the Clayton Act must establish "antitrust injury" "of the type that the antitrust laws were intended to prevent and that flows from that which make the defendant's acts unlawful." "Antitrust injury" must reflect the anticompetitive effect of the violation or anticompetitive acts made possible by the violation. *Brunswick Corp. v. Pueblo Bowl-O-Mat Inc.*, 429 U.S. 477, 489 (1977).

12. A plaintiff suffers "antitrust injury," as defined in paragraph 11 above, as a result of the prices of its competitor depressed by vertical conspiracy only if the lower prices are "predatory." *Murphy Tugboat Co. v. Crowley*, 658 F.2d 1256, 1259 (9th Cir. 1981), cert. denied, 455 U.S. 1018 (1982). *Accord, Jack Walters & Sons Corp. v. Morton Building, Inc.*, 737 F.2d 698, 708 (7th Cir.), cert. denied, 105 S. Ct. 432 (1984).

13. Only a monopolist or one who poses a dangerous probability of monopolization, as a matter of law, can engage in "predatory pricing" as that term is used in paragraph 12 above.

14. Even assuming that plaintiff could establish that the alleged vertical conspiracies damaged it, plaintiff can-

not establish "antitrust injury" because it cannot demonstrate a dangerous probability of monopoly. See ¶¶7-10 above. *Western Concrete Structures Co. v. Mitsui & Co. (U.S.A.)*, 760 F.2d 1013, 1018 (9th Cir.), cert. denied, 106 S. Ct. 230 (1985).

Dated: March 31, 1986.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STIPULATION AND ORDER DISMISSING
COUNT TWO OF FIRST AMENDED COMPLAINT
AND DEFERRING FURTHER BRIEFING AND
HEARING OF SUMMARY JUDGMENT MOTION

Dated April 28, 1986
[Caption Omitted in Printing]

WHEREAS defendant Atlantic Richfield Company ("Atlantic Richfield") has filed a motion for partial summary judgment, dated March 31, 1986, which seeks the dismissal of Counts One and Two of the First Amended Complaint (the "Amended Complaint"), containing respectively the Sherman Act § 1 and § 2 claims asserted in this action,

WHEREAS plaintiff USA now wishes to dismiss with prejudice its attempt to monopolize claims and to defer further briefing and argument on Atlantic Richfield's motion for partial summary judgment as it relates to Count One,

IT IS HEREBY STIPULATED AND AGREED by and between the parties hereto, through their respective attorneys, that:

1. Count Two of USA's Amended Complaint (and any other Count to the extent based upon a claimed attempt to monopolize but not to any other extent) is hereby dismissed with prejudice and without costs to either party.

2. USA shall have to and including June 16, 1986 to serve its opposition to Atlantic Richfield's summary judg-

ment motion addressed to Count One of the Amended Complaint and Atlantic Richfield shall have to and including July 16, 1986 to serve its reply.

3. The argument on the motion, presently set for April 28, 1986, is continued until a date to be determined after USA files its opposition.

Dated: April 23, 1986.

Respectfully submitted,
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Dated: April 24, 1986.

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ORDER

IT IS SO ORDERED.

Dated: April 28, 1986.

/s/ William P. Gray
William P. Gray
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

STATEMENT OF UNCONTROVERTED
FACTS AND CONCLUSIONS OF LAW

Dated June 9, 1986
[Caption Omitted in Printing]

Defendant Atlantic Richfield Company ("Atlantic Richfield") submits this Statement Of Uncontroverted Facts and Conclusions Of Law pursuant to Local Rules 7.14.1 and 7.14.4 in support of its Motion For A Pretrial Order (1) Defining The Relevant Product Market And (2) Determining The Legal Sufficiency Of Plaintiff's Sherman Act § 1 Case And Proposed Proof Of Vertical Conspiracy.

UNCONTROVERTED FACTS

Atlantic Richfield adopts as its Statement Of Uncontroverted Facts the facts stated in paragraphs 2 through 4 of the proposed pretrial order submitted with this motion and in paragraphs 1-4, and 15 at pp. 1-2 and 5-6 of the Statement Of Uncontroverted Facts And Conclusions Of Law In Support Of Partial Summary Judgment previously submitted with its March 31, 1986 motion for partial summary judgment ("March 31, 1986 Local Rule 7 Statement").

CONCLUSIONS OF LAW

Atlantic Richfield also adopts by reference the conclusions of law stated in paragraphs 1, 3-8, 11-14 at pp. 7-11 of its March 31, 1986 Local Rule 7 Statement. Atlantic

Richfield submits the following additional conclusions of law.*

1. In a private antitrust action by a plaintiff seeking damages from the alleged vertical price-fixing of its competitors, prices, proof of the relevant market and the likelihood of monopolization is relevant to determining (a) whether the plaintiff can satisfy the "antitrust injury" requirement of Clayton Act section 4 and (b) whether a plausible motive for the alleged conspiracy exists. Cases cited in March 31, 1986 Local Rule 7 Statement, Conclusions of Law 11-14; *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. ___, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986).

2. Proof of the relevant market is also relevant to a claim of Robinson-Patman Act primary line price discrimination requiring proof of an injury to competition. *Janich Bros., Inc. v. American Distilling Co.*, 570 F.2d 848, 855 (9th Cir. 1977), cert. denied, 439 U.S. 829 (1978).

3. An antitrust plaintiff may recover damages only for injuries that it proves were caused by the unlawful acts of the defendant and not by some other factor including lawful competition by the defendant. E.g., *MCI Communications Corp. v. AT&T*, 708 F.2d 1081, 1161-64 (7th Cir. 1983); *R.S.E., Inc. v. Pennsy Supply, Inc.*, 523 F. Supp. 954, 964 (M.D. Pa. 1981); *ILC Peripherals Leasing Corp. v. I.M.B.*

*Although the Local Rules do not require conclusions of law for the Rule 16 issue formulation portion of this motion, Atlantic Richfield submits Conclusions of Law 3-9 below for the assistance of the Court.

Corp., 458 F. Supp. 423, 435 (N.D. Cal. 1978), *aff'd mem.*, *Memorex Corp. v. I.B.M. Corp.*, 636 F.2d 1188 (9th Cir. 1980), *cert. denied*, 452 U.S. 972 (1981).

4. It is the burden of the plaintiff to segregate its injuries between those caused by lawful, and by unlawful, competition as part of showing the fact of (and not the amount of) its damages. E.g., *MCI Communications Corp.*, *supra*, 708 F.2d at 1161; *Murphy Tugboat Co. v. Crowley*, 658 F.2d 1256, 1261-63 (9th Cir. 1981); *R.S.E., Inc.*, *supra*, 523 F. Supp. 965.

5. A private plaintiff seeking to recover damages from alleged vertical price fixing conspiracies between a manufacturer and its independent dealers and distributors must establish the participation in vertical conspiracy of each dealer or distributor that allegedly caused it damages. E.g., *Link v. Mercedes-Benz of North America, Inc.*, 1984-1 Trade Cas. ¶ 66,056 (E.D. Pa.), *aff'd*, ___ F.2d ___ (3d Cir. 1986).

6. Prices arrived at by a dealer or distributor in his own best interest, even when preceded by discussions in which his supplier seeks to persuade him to adopt that price, do not amount to vertical price-fixing. E.g., *United States v. Parke, Davis & Co.*, 362 U.S. 29, 46-47 (1960); *General Cinema Corp. v. Buena Vista Distributing Co.*, 681 F.2d 594, 597 (9th Cir. 1982); *Hanson v. Shell Oil Co.*, 541 F.2d 1352, 1357 (9th Cir. 1976), *cert. denied*, 429 U.S. 1074 (1977); *Gray v. Shell Oil Co.*, 469 F.2d 742, 747-48 (9th Cir. 1972).

7. Proof of vertical price-fixing requires a showing (a) of coercion - affirmative acts by the supplier going beyond the mere granting and withdrawal of wholesale

price discounts and beyond suggestion, exposition and Persuasion – and (b) of succumbing – that the dealer was deprived of his free choice by that coercion. *In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust Litigation*, 691 F.2d 1335, 1343 (9th Cir. 1982), cert. denied, 464 U.S. 1068 (1984) ("MDL-150"); *Hanson, supra*, 541 F.2d at 1357 n.3.

8. Proof of a close conformity of retail and wholesale prices or of the granting and withdrawal of wholesale price discounts is not evidence that independent dealers or distributors participated in vertical conspiracies with their supplier. *MDL-150, supra*, 691 F.2d at 1343; *Hanson, supra*, 541 F.2d at 1357; *Gray, supra*, 469 F.2d at 747-48; *MDL 150*, 523 F.Supp. at 1119.

9. Proof of vertical conspiracy through showing the supplier's acts of coercion and the resulting succumbing by the coerced dealer inherently must be made on a dealer-by-dealer basis. E.g., *MDL-150, supra*, 523 F.2d at 1120; see *Chicken Delight, Inc. v. Harris*, 412 F.2d 830, 831 (9th Cir. 1969).

Dated: June 9, 1986.

Respectfully submitted,

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[Certificate of Service Omitted in Printing]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
DECLARATION OF MAXWELL M. BLECHER
Dated July 24, 1986

I, MAXWELL M. BLECHER, declare:

1. I am a member of the law firm of Blecher & Collins, attorneys of record for plaintiff USA Petroleum Company ("USA") in this litigation. I am licensed to practice in California and before this Court. I submit this declaration pursuant to Fed. R. Civ. P. 56(f) in opposition to defendant Atlantic Richfield Company's ("ARCO") Motion For A Pretrial Order, *et seq.*
2. To date, discovery in this litigation has focused on document productions by both USA and ARCO. Pursuant to stipulation, the parties have postponed deposition discovery until after document production by both parties has been completed.
3. As we have demonstrated in our memorandum of points and authorities, relevant market and monopoly power are irrelevant to proof a § 1 *per se* violation such as resale price maintenance. Should the Court, however unlikely, find that they are somehow relevant to USA's § 1 claim, USA will require additional discovery on these issues. That discovery includes, at the very least, deposition discovery of both major and independent marketers of gasoline to ascertain the marketing practices of each type of gasoline vendor both before and after ARCO's alleged vertical price-fixing conspiracy began.
4. I am informed and believe that deposition discovery will produce evidence that prior to the alleged

EXHIBIT A

vertical conspiracy, major oil companies and independents offered distinct services to distinct classes of customers. These differences in marketing practices include credit versus cash-only sales, full service versus self service stations, and full versus discount prices.

5. I also believe that deposition discovery will reveal the impact of ARCO's alleged vertical conspiracy in the marketplace.
6. I believe that ARCO's motion for a pretrial order dismissing USA's § 1 claim is not timely or ripe for adjudication in light of the early stage of discovery.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 24, 1986, at Los Angeles, California.

/s/ Maxwell M. Blecher
MAXWELL M. BLECHER

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PLAINTIFF'S STATEMENT OF GENUINE
ISSUES IN OPPOSITION TO DEFENDANT'S
MOTION FOR A PRETRIAL ORDER (1) DEFINING
THE RELEVANT PRODUCT MARKET AND (2)
DETERMINING THE LEGAL SUFFICIENCY OF
PLAINTIFF'S SHERMAN ACT § 1 CASE AND
PROPOSED PROOF OF VERTICAL CONSPIRACY

Dated July 25, 1986
[Caption Omitted in Printing]

Plaintiff USA Petroleum Company ("USA") submits the following genuine issues of fact and law pursuant to Local Rule 7.14.2 in support of its Opposition to Defendant's Motion For A Pretrial Order (1) Defining The Relevant Product Market And (2) Determining The Legal Sufficiency of Plaintiff's Sherman Act § 1 Case and Proposed Proof of Vertical Conspiracy.

GENUINE ISSUES OF FACT

1. Whether ARCO has engaged in a vertical price-fixing conspiracy with ARCO-branded distributors and ARCO-branded dealers to fix prices at artificially low levels?
2. Whether ARCO's vertical price-fixing conspiracy has caused USA injury and in what amount?
3. Pursuant to the Stipulation and Order Dismissing Count Two of First Amended Complaint and Deferring Further Briefing and Hearing of Summary Judgment

Motion, filed April 28, 1986, plaintiff dismissed with prejudice its attempted monopolization claim under § 2.

Dated: July 25, 1986.

BLECHER & COLLINS, P.C.
MAXWELL M. BLECHER
ALICIA G. ROSENBERG
By /s/ Alicia G. Rosenberg
Alicia G. Rosenberg
Attorneys for Plaintiff

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